

In the

Supreme Court of the United States

Nos. 480, 481, 482, 483, 484, 485, 486, 487,

October Term, 1942.

ROBERT MURDOCK, JR., ANNA PERISICH,
WILLARD E. POWDER, CHARLES SEDERS,
ROBERT LAMBORN, ANTHONY MALTEZOS,
ANASTASIA TZANES AND ELLAINE TZANES,
Petitioners

COMMONWEALTH OF PENNSYLVANIA

(City of Jeannette)

Respondent

ANSWER OF CITY OF JEANNETTE TO PETITION FOR WRITS OF CERTIORARI TO THE SUPERIOR COURT OF PENNSYLVANIA

Philip H. Tolson,

Subsidiary of the City of Jeannette,

City of Jeannette,

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Answer to Petition

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**ANSWER OF CITY OF JEANNETTE TO PETITION
FOR WRITS OF CERTIORARI TO THE SUPERIOR
COURT OF PENNSYLVANIA**

By way of answer to the petition for writs of certiorari in the above entitled case, the City of Jeannette, respondent, shows:

The record in this case does not present to this Court the question of the reasonableness of the tax imposed by Ordinance No. 60 of the City of Jeannette. This question was not raised in the Mayor's Court, or in any of the State Courts. The amount of the tax, as the ordinance plainly shows, is \$1.50 per day, or if a permit is taken on

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a weekly basis, the sum of \$1.00 per day or less, and not \$10.00 per day, as set forth in the petition.

Perhaps, the best answer to the tortured statement of facts, set forth in paragraph 7 of the petition, would be to quote from the testimony of witnesses called on behalf of the Commonwealth and on behalf of the defendants in the Court below. This testimony has been printed at length in the Record which was before the Superior Court of Pennsylvania, and is a part of the record in this case.

For the convenience of the Court, the page numbers of the Superior Court Record are designated "S. R." in this reply.

Othmar Seiler testified with reference to the petitioners, Ellaine Tzanes and Anastasia Tzanes, that he was at his home on February 25th, 1940, "when the two defendants came to his house and after being admitted to the house asked him to purchase a book called 'Creation', stating that the price was 25 cents. They also offered, for the sum of 25 cents, to sell him a Bible which they stated was worth in excess of Three Dollars. After further conversation, he purchased the book and paid the sum of 25 cents." (S. R. 14)

With reference to Willard Mowder and Charles Seders, Regis Detruf said that in response to a call he "went out of the house and saw them on the porch of the adjoining house, and asked them what books they were selling and the price. One of the defendants advised him the price was 25 cents. He agreed to purchase the book 'Salvation', and paid the defendants the sum of 25 cents." (S. R. 24)

Concerning the petitioners, Murdock and Lamborn, several witnesses testified that they "solicited them to purchase books, and after some conversation, the witness,

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Virginia Clair, was told the price was 25 cents. She paid the same and received the book 'Salvation.' (S. R. 25)

Anna Perisich and Anthony Maltezos, according to the witness, Francis Kramer, came to his house late in the afternoon of February 25th, "solicited him to buy books. He inquired the price, and was told they were 25 cents each. He purchased the book 'Salvation', and paid the sum of 25 cents. The defendants tried to persuade him to purchase a Bible for the sum of 25 cents, claiming it was worth more than \$3.00" (S. R. 25).

None of the petitioners had applied for or received the license required by Ordinance No. 60 of the City of Jeannette.

The following are fair examples of the testimony with reference to what these petitioners said or did as they went from door to door—

"A. Well, they said they were, they came to the door and my brother answered the door and said we weren't interested. They left and I went out on the porch and I hollered to that fellow right there (indicating Charles Saders); and I said, 'How much are your books?' and he said 25¢. I said 'May I see one?' He said, 'Yes, sir.' So he came over and showed me one and I looked at it and I said, 'I will take one!'"

(Testimony of Regis Detruf, S. R. 32)

"Q. Did they say anything about the price of the pamphlet?

A. They did. They said usually what they got for them was 25¢. They set their own price. It wasn't no donation or anything. That is what they said, the price of them were a quarter.

Q. Who was it that paid the quarter?

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A. Virginia Clair paid the quarter."

(Testimony of Herbert Baughman, S. R. 41)

"A. Hiij and Anna Perisich, she came in along too. So they put the record and played it, the record run down, and I said, 'It's a damn good record.' That's the words I said. So they asked me if I was interested in buying any books. I said I might. So they handed me this book, Salvation. I opened it up and started to look at it and I asked them how much they charged for these books. They say 25¢. So I hesitated for a moment, and I said, 'All right, I will take one,' and gave them a quarter.

Q. Who did you give the quarter to?

A. To Anna Perisich. I gave a quarter to Anna and she gave me the book, and she says, 'I am going to give you this book.'

Q. By the book you mean the pamphlet called Government and Peace?

A. Government and Peace, yes, sir. I said 'O. K., thanks.' I said to them, 'Have you got any Bibles?' He says, 'Yes, the Bible will cost 25¢ more.' He said, 'You'll get a bargain on that.'

Q. Who said that?

A. This gentleman right here (indicating).

Q. That is Anthony Maltezos?

A. Yes. He says, 'You're getting a bargain on that; that book is worth three dollars or three and a quarter.' I said, 'No; this will be enough for me to read.' Well, they started to get their brief case and vietrola put together and I said, 'I'm sorry, you both are under arrest.' They wanted to know what for. I told them for soliciting and selling books without a permit. I said, 'I'm a policeman.'

(Testimony of Francis Kramer, S. R. 52, 53)

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"A. No, my wife answered the door and they showed her a card and she called me and I went out and I just glanced through the card; I didn't read much about it, and I seen something about 25¢ for books at the bottom of the card. So I said to the ladies, 'Are you people selling books?' She said yes. I said, 'How much are they?' She said 'They are a quarter.' She said, 'But for 50¢ we could sell you this book and sell you the both.' I said, 'How much do you want for this book I have in my hand?' She said, 'That book is a quarter and if you buy the both of them you can have them for 50¢.' So I just bought the one book for a quarter."

(Testimony of Othmas Seiler, S. R. 56, 57)

The petitioner, Robert Lanborn, after testifying that he had no occupation other than that of Minister of the Gospel, and that he received no pay or remuneration of any kind (S. R. 60 to 66), and after doing a great deal of sparring with evasive answers; finally testified under cross examination:

"Q. Did somebody make you a minister?

A. No.

Q. What did you do to become a minister?

A. We go out from house to house exhibiting publications.

Q. Where do you get these publications?

A. I get those publications from the Watch Tower Bible and Tract Society, Brooklyn, New York.

Q. How many publications did you have with you yesterday, the 25th?

A. I couldn't make an exact statement. I don't know.

Q. Did you have a suitcase full?

A. I had my little satchel full, yes.

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Q. When had you gotten those?

A. Before I left home.

Q. That is before you left Cadiz, Ohio?

A. Yes.

Q. When did you leave Cadiz?

A. Saturday, about 11:00 o'clock in the morning.

Q. How did you go?

A. By automobile.

Q. Do you have your own automobile?

A. No; I have my dad's automobile.

Q. Have you paid for those publications?

A. Yes.

Q. How much did you pay for them?

A. I couldn't say the exact amount, because I didn't know how much publications that I had.

Q. How much do you ordinarily pay for this book *Salvation*?

A. It is offered to the public on a contribution of 25c.

Q. How much do you pay for it?

A. Twenty cents.

(S. R. 66, 67)

Although the members of Jehovah's Witnesses insist upon calling the price for which they buy and the price for which they sell their books a "Contribution", the transaction is so far commercial that they may obtain the books on credit.

Q. Did you ever obtain any without making a contribution?

A. On credit I have, yes.

Q. You mean they trusted you for the contribution that you had to later make?

A. Yes.

(Testimony of Robert Murdock, Jr., S. R. 83)

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Willard Mowder, much younger than the other petitioners, and much more direct in his answers, testified:

"Q. Mr. Mowder, where do you live?

A. Virginville, West Virginia.

Q. What is your occupation, Mr. Mowder?

A. None at all.

Q. Why did you come to Jeannette yesterday?

A. My main reason was I wanted to get in some kind of work that I learned that Jehovah at sometime or another would make this world a different world, and I like this kind of work very much. That is my reason for coming."

(S. R. 96, 97)

Earl V. Singer, along with Mr. Hessler, was in charge of the delegation that canvassed the City of Jeannette on the occasion which gave rise to these appeals. He owned a trucking business in East Liverpool, Ohio, but was merely keeping "a weather eye on the business" while he devoted full time "to take to the people of good will a message of His Kingdom." With reference to the system of buying and selling books from the Watch Tower Society, he testified:

"Q. How much do you pay for these books?

A. You mean the bound books?

Q. Yes!

A. Our society has set up a system of allowing these people who devote all their time to the work of proclaiming the Kingdom Message, of giving these bound books to them on a contribution of 5c. We take them out and place them with the people,—on the contribution set by the society. That enables those who are preaching the Gospel of God's Kingdom to buy a bite to eat once in awhile.

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Q. Exactly. So that that book costs you how much?

A. That costs me—

Q. Five cents.

A. If I would get one from the society it would cost me 5¢.

Q. And when you in turn turn those books over to other solicitors do you charge as much as 20¢ for it?

A. I am not permitted to that.

Q. Do you have charge of what they call a company?

A. No, sir. The only way that is done, in other words, I cannot be a distributor other than going door to door with the publications, that is people who are not associated with the organization.

Q. And when you go from door to door the contribution that you expect is 25¢?

A. The society sets that contribution, yes, sir.

Q. Sets that contribution?

A. That's right. It is a fund of our society set aside to aid those who give all their time to the Lord's work.

Q. And you have been giving all your time for the past year and a quarter anyway?

A. Yes, sir.

Q. And for that you get the special contribution rate of 5¢, and when you exact contributions of the persons who take the books from you, the rate is the standard rate of 25¢, is that right?

A. I have an automobile, that takes gasoline; I eat. That money I use to eat I get from my business, and not only that but I give many of the bound book publications to the Lord's poor who cannot afford to contribute and get the life-sustaining truths

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of Almighty God. But in the long run I give more than I receive."

(S. R. 105)

Thus it very definitely appears that these petitioners are engaging in transactions which must be branded as purely commercial. They may call the purchase price of their books "Contributions", and may term their activities in selling from door to door "The Worship of God", but this does not make the transaction any less a business matter.

Wherefore the respondent respectfully requests that the petition for issuance of eight writs of certiorari to the Superior Court of Pennsylvania be dismissed.

COMMONWEALTH OF PENNSYLVANIA,

CITY OF JEANNETTE,

By FRED B. TRESCHER,
City Solicitor.

*Argument***BRIEF**

In deciding this case, the Superior Court of Pennsylvania weighed the constitutional right of citizens of the City of Jeannette to be secure in their homes and the right and obligation of the City to protect them in their homes against the claimed right of members of Jehovah's Witnesses to enter homes without the payment of a modest license fee imposed by the ordinance for the purpose of selling books.

Itinerant vendors, who go from door to door into homes, for the purpose of soliciting orders for or selling merchandise of any kind have been subjected to the payment of a license fee in Pennsylvania from earliest times. The decisions which sustain the authority of the State to levy such a tax do so partly on the theory that it is a revenue producing measure and partly on the theory that the fee is regulatory. It subjects itinerant vendors to the payment of a tax much the same as permanent businesses are subject to the payment of a mercantile tax. It is regulatory in the sense that known criminals and wholly irresponsible persons will not apply to or register with the municipal authorities. When a person who engages in business which requires him to visit homes and go into many of them has taken out a license and paid the small fee, the municipal authorities have a record of his name and address, and have an opportunity to check on the individual while he is engaged in his activities. The citizens are thus assured of some measure of responsibility on the part of the canvasser. They have the knowledge that he is registered with public authorities, and are free from the almost constant annoyance that would follow in the case of unrestricted license.

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"The effect of the ordinance would seem to be to subject persons who would otherwise pay no license for the privilege of doing business within the borough, to the duty of paying something for the privilege, when they undertake to exercise it without incurring the expense of a mercantile license." * * * The peddling of 'other articles' besides market produce, includes everything which may be disposed of by the method called 'hawking and peddling'; and we cannot say that this does not include canvassing from house to house and soliciting orders for books."

Warren Borough v. Geer. 117 Pa. 207, 211, 212 (1887).

— But it is the manner of sale that makes a peddler. * * * The business of the itinerant vendor is the same in either case, and so is the inconvenience and annoyance he inflicts on others. The merchant or storekeeper is a resident, has a fixed place of business, where his goods are shown to those who come in search of what they need, where he can be reached by process, and compelled to make good his guaranty of the quality of his wares. The peddler is a transient, with no fixed place of business, who seeks customers by invading their homes, and makes sales by persuading people to buy what they do not need, and who, by the time he is wanted to answer for his representations and engagements, is out of sight and out of reach of process. It is this matter of tracking a laboring man or woman into the home, and laying seige to him or her by an unscrupulous and self-possessed stranger, who is after money and has no delicate scruples about the manner in which he gets it, that has made the peddler a dread in the country and in the villages, and has led the law makers in this and other states to put the business under strict regulation.

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tions when it is not wholly forbidden. * * * The next point taken by the defendants is that, under the constitution of the state, an owner of goods has an indefeasible right to carry them when and where he pleases in search of buyers. * * * Our laws relating to peddlers are directed not against the right of acquisition, but the manner in which some people exercise that right; not to the right of an owner to sell his goods, but to the manner in which he may sell them. Our peddling laws are therefore not in violation of the constitutional rights of the owners of goods, but are a wise exercise of the police power over the manner in which goods, wares, and merchandise shall be sold."

Commonwealth v. Gardner, 133 Pa. 284, 289, 290 (1890).

The ordinance of the City of Jeannette imposes no police censorship. It gives no discretion to anyone to say that Jehovah's Witnesses may not sell their books while other people may sell theirs. It merely requires all persons who engage in the particular type of business activity to obtain a license. The City of Jeannette has never undertaken to enforce the ordinance against members of Jehovah's Witnesses who go from door to door and hand in the type of card which is found on S. R., pages 77 and 78. It has never interfered with members of Jehovah's Witnesses who stand on the street corners and sell the Watch Tower magazine. There are undoubtedly a number of sincere and well meaning members of Jehovah's Witnesses who undertake to keep themselves within the bounds of the licensing ordinance. However, there are undoubtedly a great many who are engaging in commercial activities and who actually go from door to door and into homes and sell for profit. The ordinance of the City of Jeannette affects only those in the latter

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category. With respect to each of the petitioners who were convicted before Mayor O'Connell, there is positive evidence of sales.

In *Schneider v. Town of Irvington*, 308 U. S. 147, this Court was careful to say:

"We are not to be taken as holding that commercial soliciting, and canvassing may not be subjected to such regulation as the ordinance require."

Ordinance No. 60 of the City of Jeannette was before this Court in *Stewart v. Commonwealth of Pennsylvania*, (City of Jeannette), 309 U. S. 674, and the petition for certiorari there asked, was dismissed.

Bowden v. City of Fort Smith, Arkansas, 62 S. Ct. 1231, decided June 8th, 1941, fairly and adequately disposes of the contention that the imposition of a license fee to peddle books from house to house violates the petitioners' rights of free speech, press and worship.

The Courts of Pennsylvania and this Court, as well as the State and municipalities of Pennsylvania, have already gone far in assuring to Jehovah's Witnesses and all other religious groups the greatest latitude in expressing their religious views. They are free to gather together in homes, in meeting places or wherever they see fit for the purpose of worship. They are at perfect liberty to use the streets for the purpose of obtaining converts either by giving away or selling their literature.

The right of privacy, the right of citizens to be secure in their homes, is at least equal with the high privilege of press and worship. When the religious tenets of a particular group call upon them to engage in an activity which is purely commercial and secular, there is no reason why the constitutional protection thrown about homes should

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be sacrificed. In such case, the religious freedom of the minority ends at the doorstep of the majority.

Respectfully submitted,

FRED B. TRESCHER,

Solicitor for the City of Jeannette.

